

Agricultural Marketing Service, USDA

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as defined in any order (including this part) issued pursuant to the Act.

(c) *Partially regulated distributing plant* means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) *Unregulated supply plant* means a nonpool plant that is neither an other order plant nor a producer-handler plant, and from which fluid milk products are shipped during the month to a pool plant.

(e) *Governmental agency plant* means a plant owned and operated by a government institution which disposes of Class I milk in the marketing area. Such plant shall be exempt from all provisions of this part.

[39 FR 16312, May 8, 1974, as amended at 41 FR 18057, Apr. 30, 1976]

§ 1076.9 Handler.

Handler means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to the milk of producers diverted by the association for the account of such association pursuant to § 1076.13;

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer which is delivered to a pool plant in a tank truck owned and operated by, or under the control of, such cooperative association. If the milk is delivered to the pool plant of another handler, the plant operator may be the handler for such milk if both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1076.7(d).

[39 FR 16312, May 8, 1974, as amended at 46 FR 27905, May 22, 1981]

§ 1076.10 Producer-handler.

Producer-handler means any person who is both a dairy farmer and the operator of a distributing plant, and who meets all of the following conditions:

(a) Receipts of fluid milk products at his plant are solely milk of his own production and from pool plants of other handlers;

(b) Receives no milk products other than fluid milk products from any source for use in reconstituting fluid milk products; and

(c) The maintenance, care and management of the dairy animals and other resources necessary to produce the milk and the processing, packaging, and distribution of the milk (including filled milk) are the personal enterprise and the personal risk of such person.

§ 1076.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is (1) received at a pool plant, or (2) diverted as producer milk pursuant to § 1076.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1076.44 (a)(8)(iii) and the corresponding step of § 1076.44 (b);

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order; and

(4) Any government institution which produces milk in conjunction

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with the operation of a plant exempt from all provisions of this part pursuant to § 1076.8(e).

[39 FR 16312, May 8, 1974, as amended at 41 FR 18057, Apr. 30, 1976]

§ 1076.13 Producer milk.

Producer milk of each handler means the skim milk and butterfat in milk of a producer that is:

(a) Received at a pool plant directly from such producer by the operator of the plant;

(b) Received by a handler described in § 1076.9(c); or

(c) Diverted from a pool plant, for the account of the handler operating such plant or for the account of a handler described in § 1076.9(b), to another plant (other than a producer-handler plant) subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion under this section unless during the month at least one day's production of milk of such dairy farmer is physically received at the pool plant from which diverted;

(2)—(4) [Reserved]

(5) Diverted milk shall be priced at the location of the plant to which diverted.

[46 FR 27905, May 22, 1981, as amended at 55 FR 35895, Sept. 4, 1990]

§ 1076.14 Other source milk.

Other source milk means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1076.40(b)(1) from any source other than producers, handlers described in § 1076.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1076.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1076.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1076.40(b)(1)) for

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which the handler fails to establish a disposition.

§ 1076.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section *fluid milk product* means any milk products in fluid or frozen form containing less than 9 percent butterfat, that are in bulk or are packaged, distributed and intended to be used as beverages. Such products include, but are not limited to: Milk, skim milk, lowfat milk, milk drinks, buttermilk, and filled milk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, sterilized, concentrated (to not more than 50 percent total milk solids), or reconstituted.

(b) The term *fluid milk product* shall not include:

(1) Plain or sweetened evaporated milk, plain or sweetened evaporated skim milk, sweetened condensed milk or skim milk, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

[58 FR 27865, May 11, 1993]

§ 1076.16 Fluid cream product.

Fluid cream product means cream (other than plastic cream or frozen cream), including sterilized cream, or a mixture of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

[58 FR 27865, May 11, 1993]

§ 1076.17 Filled milk.

Filled milk means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat,